App. F. IX-4

Previous References

Legis 61-21-1-6

1937.
(Law)

File No. 116-37

Serial Nos. nil

Letter References

PRESERVED

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. nil

Part B for Jany 1938

SUBJECT.

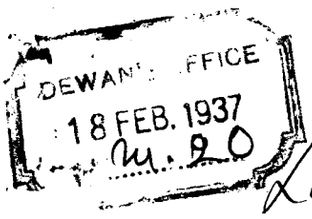
Extending the rights of civil Suit against Govt in respect of claims founded on tort

Ordered to lie over

WD 0295—GPB—22,500—13-8-37

31/1/38

4832 N36
P



DEWAN'S MINUTE.

Law FILE No. 116 1937

1) There is no right of Civil Suit against Govt. in Mysore as in British India.
Would it not be a good thing if final this
What obtains in Mysore now is a very imperfect
right and is sometimes ineffective
The final of this right is not likely to affect the
strength of the Executive; nothing untoward has
happened in British India. On the other hand
efficient
good government will be promoted as our officers
will be careful to avoid dilatory & negligent
methods of work.
The question may be examined.

MJ
18-2-37

C. Secy)

2) Law Section.
Please put up a
short note on the subject
Examining the provisions of law
here and in Br. India. Early
MJ
18/2

3) Please put up the file relating to the introduction of Regn VII of 1923; also please put up the
Provision
Provision Indian corresponding to our Regn VII of 1923.

BKR
19.2.37

4) Subject matter Judicial file 61-21. There is
one communication from Govt. in Rev. Secretary

4832
10

(2

REMARKS MINUTE.

Back at the time of the transference of the territories & rights of British territories in India to the Crown in 1858 & the continuance of the liabilities of the East India Coy. to be dealt more expressly, proper for. (vide p. 464 of the works in this file)

See
19/12/37
JMSL

Serial No.

5) It is an attribute of Sovereignty and a universal law that a State cannot be sued in its own Courts without its Consent. Under the maxim that the Crown can do no wrong, the Crown in England is exempt from criminal prosecutions and even for a civil action in tort. Here a restricted right of suit is allowed by what is known as a 'Petition of Right' and the agents of the Crown in England cannot claim immunity in respect of torts. "Every official from the Prime Minister down to a Constable or a Collector of taxes is under the same responsibility for every act done without legal justification as any other citizen. The Reports abound with cases in which officials have been brought before the Courts, and made, in their personal capacity liable to punishment, or to the payment of damages, for acts done in their official character, but in excess of their lawful authority."

6) In British India, the position is rather peculiar. Until 1859, the Government was vested in the East India Company. That Company exercised different functions. It was partly a trading company with the rights and liabilities

WD 0417—GPB—30,000—8-9-36

of an ordinary Commercial body, & also exercises Sovereign powers delegated to it by the Crown. In respect of its acts in the former capacity it could be sued. For its acts in the latter capacity, it could not. In 1858, the East India Company came to an end and since then India is has been governed directly by the Crown. By Statute 21 and 22 Vict. C. 106 Sections 1 and 2 the territories and the Revenue of India were transferred to the Crown. In order, however, that no one should be deprived of any right or claim which he might have had against the East India Company, Section 65 of that Statute provided that the Secretary of State in Council as a body corporate, might be sued in all cases in which the Company might have been sued. The position therefore is that the liability of the Secretary of State for India in Council to be sued is co-extensive with the liability to which the East India Company was subject at the Date of the Government of India Act 1858.

Serial No.

~~Until 1923~~, until 1923,

7) Coming to Our State, there was no provision of law under which a subject of the State could file a suit against the Govt for any relief for which a suit would ordinarily lie against a private person except in some cases expressly provided for in some Regulations such as the Land Revenue Code and the Land Acquisition Regulation. The affrieved party has to file a suit against the individual officer concerned in respect of an act purporting to be done by him in his official capacity. In such cases the Government usually undertook the defence and the damages, if any, awarded were paid from public revenues. It was not however obligatory on the Govt to do so. The affrieved party had therefore no certainty of obtaining the relief. Representations were accordingly made both in the Representative Assembly and the Legislative Council for the recognition of the right to sue the Govt directly. After a careful consideration of the matter it was considered expedient to concede the right of suit against Government for certain Specified reliefs. The reliefs for

NOTE—Contn. Sheet.

WD 0417--GPB—30,000—8-9-36

4832/P (6

File No. of 193 General and Revenue Secretariat

Serial No.

Which the suits were proposed & are allowed were selected from the list of cases in which suits against the Crown by way of Petition of Rights were permitted in England; and Regulation VII of 1923 was enacted. This Regulation provides for suits against Government

(a) for recovery of land, goods, or money in wrongful possession of Government or for compensation when restitution cannot be given;

(b) for specific performance of Contracts;

(c) for damages for breach of Contracts, express or implied;

(d) for rents and mesne profits;

(e) for the rectification or Cancellation of any instrument;

(f) for Compensation for injury to person or property due to wrongful neglect or default in the Management of any industrial Concern owned by Government.

[The question has been exhaustively discussed in the Legis. File 61-21, relating to the passing of Regn VII of 1923 & places below.]

U8 31
P

(7

Serial No.

8) Or will this be seen that Since 1923, the subjects of this State have for the privilege of filing suits against Government for reliefs enumerated above, in addition to the rights they have under various other Regulations.

9) Even in England, a petition of right will not lie in respect of a claim founded upon tort. From the maxim that the King cannot do wrong, it follows, as a necessary consequence, that the King cannot authorise wrong. As in the eye of the law no such wrong can be done, so, in law no right to redress can arise, and the petition, therefore which rests on such a foundation falls at once to the ground - The proper remedy provided there is by an action against the officer or servant who actually committed the tortious act, and such a person cannot plead in defence the authority of the Crown. Such actions will, in most cases, have the same effect as a petition of right for damages for the tort, since in proper cases, the Crown will defend its officer and become responsible for any damages awarded.

10) In British India also, a claim

NOTE—Contn. Sheet.

WD 0417--GPB—30,000—8-9-36

U 832
P

8

File No. of 193 . | General and Revenue Secretariat

Serial No.

is bar is not recognised, unless the cause of action arises in consequence of any act done under the orders of Govt. or subsequently ratified by Government. Save as pointed out above, the principles of law which govern suits of the Kind in British India have no application to Myore.

BMR
31.3.37

General
~~Chief~~ Secretary)

GENERAL SECRETARY. 1 - APR. 1937 968

CHIEF SECRETARY. 1.[illegible] 19[illegible]

4) For perusal, with the connected Legis file 61-21.

5) The final note of the then Decnd member of Council, dated 29th Sept 1922, briefly indicates the position in respect of this matter of suits against Govt, prior to the passing of Regulation No VII of 1923, and the objects & reasons with which the said law was promulgated. A.

6) The Regulation in question provides for suits against Government, when the claim in respect of such suit is for any of the six classes of relief specified in Sec 2. of the Regulation. It is seen that these reliefs were selected from the list of cases in which suits against the Crown, by B.

Suits against Govt 19

General and Revenue Secretariat | File No. | of 193 . | [App. F. III—2

Serial No.

way of the petition of right are permitted in England.

Theo' Ch. Sec'y
First member
& Dewan.

4.4.37.

UCT
3/4/37.

BNR
3-4-37
MS
3/4/37
BNR
3.4

14 Regn VII of 23 does provide for Suits agst Govt in certain cases which have been defined pretty widely; This provn is being utilised fairly largely as the number of suit notices we are getting every year indicates. If any extn of the right is wanted we have only to add some more clauses but there has not been, so far as I know, any such demand.

JDR
13/4

MS
15-4-37

NOTE—Contn. Sheet.

WD 0417—GPB—30,000—8-9-36

Mr. C. F. NORONHA, M.A.,
Private Secretary.

DO No. 3549
Encl. file

Bangalore,
16th April 1937.

File given to the Dewan.
MS
1/6/37

Dear Sir,

I am desired to send you herewith the Secretariat file in which the question of making provision for civil suits against Mysore in the State as in British India has been examined.

I am to say the Dewan will be glad if you will kindly peruse the papers and favour him with any remarks you wish to make on the matter.

Yours sincerely,

Rajasevasakta
S. Hiriannaiya, Esq., M.A., B.L.,
Basavangudi,
BANGALORE CITY.

Sheet 15

Mr. S. Hiriannaiya had called here this morning when the Dewan was away. Left this file with the instruction of the Dewan. This note is attached.

29/9

28/9

16
Asst. Sec'y Law Section. Please discuss this with me.

MS
11/10

(12.10.37)

Confidential

(11

Note.

When British India has conceded wide powers of suit against Government there is no reason why Mysore should not follow suit. The historical origin of the right or its legal form is immaterial; what is important—is that every civilised State has granted this right to the subject in some form or other.

Admittedly, the right given in Mysore is much narrower than in British India and what is not given is at least as important from the point of view of the subject as what has been conceded. Take an illustration: Suppose on a highway maintained by the State repairs to a culvert are in progress and the officer in charge fails to put up a danger signal to warn off traffic and a motor cyclist comes to grief at night. Why should the right to compensation from Government be denied to him? There is no answer to say that the officer whose negligence was the cause of the mishap might be proceeded against. The officer might be a man of straw; the employer is responsible for the negligence of his servants and so is the Government in this case.

An incident that happened some time ago illustrates the point even better. Owing to the gross negligence of the subordinate staff of the ophthalmic section of a certain hospital a number of people lost their eyes—some of them breadwinners

of the service. Are these people to be told to get
Compensation from the staff?

I think the Government has taken a generous
view in some cases and awarded Compensation but
not all cases ~~to~~ come up before them nor has
Compensation been granted in all of such cases.
It seems only reasonable that the right of the
subject in such cases should be fully conceded
and if the law is amended as proposed the subordinate
staff on whom ultimately the Government have
to depend for the proper execution of their orders will
try to be more vigilant and alert in the discharge
of their duties — a distinct gain to administrative
efficiency

Perhaps one reservation may have to be made
Aggrieved public servants may possibly file suits
against Government for wrongful dismissal &c.
It seems undesirable to allow this right as, in the
public interests, Government must be the sole
judge and authority on the disciplinary action
to be taken against ~~the~~ their employees.

There need be no fear that the change in
law would affect the Police officers in the fearless
discharge of their duties. The Police Regulation,
gives them ample protection both from Civil and
Criminal liability. Further, the change proposed
relates only to the right of Civil Suit against
Government and leaves the relation between the
officers and the public untouched."

Shivamurthy

(13

Serial No.

17 The substance of Mr. Hariyannaya's note is to the effect that the provisions of Regulation VII of 1923, may be enlarged by conceding the right of suit in respect of claims founded on tort.

I beg to submit that such a right is not enjoyed by the subject either in England or in British India. Kind reference is invited to paragraph 9 of my note dated 31.3.37. It is argued by Mr Hariyannaya that Govt must hold itself responsible for the negligence of its officers on the ground that the employer is responsible for the negligence of his servant. As pointed out by Lord Dynehurst L.C. in (1843) 1 Ph. 305, the Sovereign could not be held liable for personal negligence and therefore the principle by which a master is held liable for the negligence of his servants could not apply to the Sovereign.

If Mr. S. Hariyannaiah finds the example of a motor cyclist coming to grief at night, on account of the failure of the officer in charge of the repairs of a culvert to put up a danger signal and says the cyclist must have a

NOTE—Contn. Sheet.

WD 0284—GPB—30,000—13-8-37

a suit against Govt for damages on account of the negligence of its officers. A similar question came up before the Madras High Court for consideration in the case reported in 39 Madras 351. There, it was not a cycle accident but a carriage accident. The claim of the plaintiff for damages against the Secretary of State for India in Council was negatived on the ground that the plaintiff had in law no cause of action against the Secretary of State, and that the latter could not be made liable for the negligence of the servants in the course of their employment.

To the following passage from Story on Agency, may, with advantage, be considered in this connection

'It is plain, that Government itself is not responsible for the misfeasances or wrongs, or negligences, or omissions of duty of the subordinate officers or agents employed in the public service; for it does not undertake to guarantee to any persons, the fidelity of any

Limits against fmt 3415 of 37 (15)

Serial No.

of the officers or agents, whom it employs; since that would involve it, in all its operations, in endless embarrassments, and difficulties, and losses, which would be subversive of the public interests."

BKR 25.11.37

Chief Secy)

GENERAL SECRETARY. 7 DEC. 1937 3239

2 Received instructions from the Chief Secretary to submit the file after the return of the 1st Member from Leave.

BKR 25-11-37)

2-2 For orders.

1st Member Thro' Genl Secy

MS 6.12.37

Ind 15/12/37 BKR 7.12

BKR 15.12.37)

I agree with the Asst Secy's note. The two cases specifically referred to in the Hiriyanniah's note relate to wrongful acts or negligence on the part of subordinate officers. In such cases there is usually no remedy agst the Crown or Govt in England or British India vide the authorities quoted in the note

NOTE—Contn. Sheet.

WD 0284—GPB—30,000—13-8-37

9415

Suits against Govt (16

(Xlew File No. 116 of 193 7 | General and Revenue Secretariat

V+ The fact that Mr H himself says that the public servants should not be given the right to sue in cases of dismissal shows that some reservation is necessary.

V5 As I pointed out in my minute of 13-4-37, if any extension of the right is needed it may be added to the Legn; but so far no class of cases has been proposed which requires immediate action

31/1/38
4394

OFFICE OF THE
FIRST MEMBER OF
JAN 3 1938
No. 4087

30/12

MS
3/1/38

BKR
3.1.38

Dewan) Mrs Lidoor.

3-1-38

MS
4.1.38

BKR
4.1.38

File register and

B
8-1-38